

**From:** Witt, Jon [Witt.Jon@epa.gov]  
**Sent:** 4/14/2021 9:14:50 PM  
**To:** Casso, Ruben [Casso.Ruben@epa.gov]  
**Subject:** RE: New Mexico Gets Sterigenics Emissions Suit Sent to State Court

Good to know, thx

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**From:** Casso, Ruben <Casso.Ruben@epa.gov>  
**Sent:** Wednesday, April 14, 2021 5:13 PM  
**To:** Witt, Jon <Witt.Jon@epa.gov>  
**Subject:** New Mexico Gets Sterigenics Emissions Suit Sent to State Court

<https://news.bloomberglaw.com/environment-and-energy/new-mexico-gets-sterigenics-emissions-suit-sent-to-state-court>

## New Mexico Gets Sterigenics Emissions Suit Sent to State Court

April 14, 2021, 12:46 PM

- Toxic gas degraded air quality, state says
- Lawsuit doesn't raise federal question, court rules

New Mexico's lawsuit against Sterigenics U.S. LLC and Sotera Health Co. over ethylene oxide releases from its plant will head back to a state court because no federal issues are in dispute in the nuisance case, a federal court ruled.

Sterigenics, Sotera Health, Sotera Health Holdings LLC, and other related companies argue the decision on whether emissions from its Santa Teresa Plant were illegal depends on the interpretation of regulations issued under the Clean Air Act. The need to apply and interpret federal regulations "necessarily raises a federal question," according to the companies.

Ethylene oxide is a toxic gas used to sterilize medical equipment, and New Mexico says it has "significantly deteriorated air quality in Santa Teresa and surrounding communities for decades."

The state in its lawsuit simply alleges the companies knowingly created and maintained a public nuisance, according to the U.S. District Court for the District of New Mexico. The public nuisance claims "can succeed without reference to any federal statute or regulation," the court said Tuesday.

But the outcome of the nuisance claims will impact "the entire medical products sterilization industry," the companies also argued. The court disagreed, saying the case raises a question specific to the Santa Teresa Plant. This "fact-bound and situation-specific" question doesn't constitute a "substantial federal question," according to the ruling.

States can require more stringent air pollution limits than the CAA. Forcing New Mexico to litigate its state public nuisance claims in federal court "would upset the congressionally approved balance of federal and state judicial responsibilities" represented in the federal law, the court said.

Judge Kenneth J. Gonzales remanded the case to the Third Judicial District Court.

The New Mexico Attorney General's Office, Grant & Eisenhofer PA, and Robles, Rael & Anaya PC represented the state.

Alston & Bird LLP and Modrall, Sperling, Roehl, Harris & Sisk PA represented Sterigenics. Modrall, Sperling also represented Sotera Health.

The case is New Mexico ex rel. Balderas v. Sterigenics U.S. LLC, D.N.M., No. 2:20-cv-01355, 4/13/